

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ANALDO SAMUEL,

Defendant.

* * * * *

* Case No. 08-CR-722 (CPS)

* Brooklyn, New York

* February 18, 2009

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE JUDGE RAMON E. REYES, JR.
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

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For the Defendant:

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1 (Proceedings commenced at 12:15 p.m.)

2 THE CLERK: Criminal cause for a plea. The docket
3 number is 08-CR-722, U.S.A. v. Samuel. Counsel for the
4 defendant, please state your appearances.

5 MR. HUESTON: Michael Hueston for Analdo Samuel.
6 Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 THE CLERK: Counsel for the government, please
9 state your appearances.

10 MR. SPECTOR: Good afternoon, Your Honor. Daniel
11 Spector for the government. Standing with me at counsel
12 table is Al Patton, a Postal Inspector. We also have in the
13 courtroom two of the victims, Mr. and Mrs. Hernandez, along
14 with their attorney Eric Manganelli.

15 THE COURT: Good afternoon, everyone. Please be
16 seated.

17 I take it that -- well, why don't you tell me?
18 There is no plea agreement?

19 MR. SPECTOR: That is correct, Your Honor.

20 THE COURT: So Mr. Samuel will be pleading guilty
21 to the indictment?

22 MR. SPECTOR: That's correct, Your Honor.

23 THE COURT: All right. Is that correct, Mr.
24 Samuel?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. This is a serious decision
2 that you have to make, Mr. Samuel, and I'll have to make sure
3 that you understand your rights and the consequences of your
4 guilty plea. To do that, I'll have to ask you some questions
5 and that will require that your answers be made under oath,
6 so I'll ask my deputy to swear you in now.

7 (The defendant is sworn.)

8 THE CLERK: Can you please state your full name for
9 the record?

10 THE DEFENDANT: Analdo Samuel.

11 THE CLERK: Please be seated.

12 THE COURT: Mr. Samuel, do you understand that
13 having been sworn, your answers to my questions will be
14 subject to the penalties of perjury or of making a false
15 statement if you do not answer truthfully?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. I first want you to understand
18 that this is Judge Sifton's case. He's the judge who will
19 sentence you and make the ultimate decision as to whether to
20 accept your guilty plea.

21 If you wish, you have the absolute right to plead
22 guilty before him and there will be no prejudice to you.

23 Alternatively, if you wish, I will listen to your
24 plea. A transcript will be made by a court reporter and
25 Judge Sifton will then review the transcript in connection

1 with your sentence. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you wish to give up your right to
4 have Judge Sifton hear your plea and instead proceed before
5 me?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: In connection with that, I've been
8 given the order of referral from Judge Sifton which has his
9 signature. It also has a number of other signatures. One of
10 them is adjacent to that yellow arrow.

11 Is that your signature?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And did you read this carefully before
14 you signed it?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: Has anyone made any promises to you or
17 threatened you to get you to plead guilty before me as
18 opposed to Judge Sifton?

19 THE DEFENDANT: No, sir.

20 THE COURT: Before accepting your plea, there are a
21 number of questions I have to ask you to ensure -- assure
22 myself that your plea is valid. If you don't understand any
23 of the questions, let me know and I'll re-word them. How old
24 are you?

25 THE DEFENDANT: I'm 42.

1 THE COURT: What schooling or education have you
2 had?

3 THE DEFENDANT: High school.

4 THE COURT: In the past 24 hours, have you taken
5 any narcotic drugs, medicines or pills, or have you drunk any
6 alcoholic beverages?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you ever been hospitalized or
9 treated for narcotic addiction or mental or emotional
10 problems?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you under the care of a doctor or
13 psychiatrist for any reason?

14 THE DEFENDANT: No, sir.

15 THE COURT: Is your mind clear right now?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand what's going on?

18 THE DEFENDANT: Yes.

19 THE COURT: Mr. Hueston, have you discussed these
20 matters with Mr. Samuel?

21 MR. HUESTON: Yes, I have, Your Honor.

22 THE COURT: Are you satisfied that he understands
23 the rights that he's waiving by pleading guilty?

24 MR. HUESTON: Yes.

25 THE COURT: Is he capable of understanding the

1 nature of these proceedings?

2 MR. HUESTON: Yes, he is.

3 THE COURT: Do you have any doubt at all about his
4 competence to plead guilty at this time?

5 MR. HUESTON: No, I do not.

6 THE COURT: I take it that you've discussed with
7 him the maximum and minimum sentences and fines that can be
8 imposed upon him?

9 MR. HUESTON: Yes, I have.

10 THE COURT: And based on the fact that I've been
11 given a penalty sheet, I take it you've discussed with him
12 the effect that the sentencing guidelines have on his case?

13 MR. HUESTON: Yes, I have.

14 THE COURT: And have you gone over the penalty
15 sheet with him?

16 MR. HUESTON: Yes, I have.

17 THE COURT: Okay. Are you satisfied that he
18 understands the possible consequences of pleading guilty?

19 MR. HUESTON: Yes, I am.

20 THE COURT: Okay. Mr. Samuel, have you had enough
21 time to discuss these matters with Mr. Hueston?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you satisfied to have him represent
24 you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Samuel, have you received a copy of
2 the indictment in this case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. And have you discussed with Mr.
5 Hueston the charges that are pending against you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand the charges that are
8 pending against you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. What I want to do is go over the
11 indictment just to make sure we're all on the same page, as
12 they say, since you will be pleading guilty to the
13 indictment.

14 Count 1 charges you with conspiracy to commit wire
15 fraud. Count 2 charges you with wire fraud. Count 3 charges
16 you with identity theft. Count 4 charges you with identity
17 theft and it's all in relation to the scheme to defraud the
18 Hernandezes, I take it. Is that correct?

19 THE DEFENDANT: Yes, sir.

20 MR. SPECTOR: Judge, just to be clear, there
21 actually were two different schemes. One was defrauding --
22 the Hernandezes were victims of one scheme and Santeech (ph.)
23 Thompson was the victim of the other scheme.

24 THE COURT: Has the other victim been notified?

25 MR. SPECTOR: Yes, Your Honor.

1 THE COURT: Okay. Is that correct, Mr. Samuel?
2 That there are two different schemes?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. What I want to do now is go
5 over the rights that you have and the rights that you'll be
6 giving up by pleading guilty. First of all, you have the
7 right not to plead guilty. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. If you plead not guilty to the
10 charges, you would have the right and under the Constitution
11 and laws of the United States to a speedy and public trial
12 before a jury with Mr. Hueston's assistance on the charges
13 contained in the indictment. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: At any trial, you would be presumed to
16 be innocent. That means that you wouldn't have to prove that
17 you were innocent. Under our legal system, it's the
18 government that bears the burden to prove your guilt beyond a
19 reasonable doubt.

20 If at any trial the government would fail to meet
21 that burden of proof, the jury would have to find you not
22 guilty.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That's why sometimes jurors return

1 verdicts of not guilty even though they believe the defendant
2 on trial probably committed the crime charged. When a jury
3 returns a not guilty verdict, they're not saying that they
4 believe the defendant is innocent. They're only saying that
5 they're not convinced beyond a reasonable doubt that he's
6 guilty. Do you understand the different between those two?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In the course of a trial, witnesses for
9 the government would have to come into court and testify in
10 your presence. Your lawyer would have the right to cross-
11 examine each witness, to object to evidence offered by the
12 government and he could offer evidence on your behalf. Do
13 you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: At trial, you would have the right to
16 testify on your behalf if you wanted to. On the other hand,
17 you couldn't be forced to testify if you didn't want to.

18 Under the Constitution and laws of the United States, no
19 person can be forced to be a witness against himself and if
20 you had a trial and did not testify, Judge Sifton would
21 instruct the jury that they could not hold that against you.

22

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If instead of going to trial you plead

1 guilty to the crimes alleged in the indictment and if Judge
2 Sifton accepts your guilty plea, you'll be giving up your
3 Constitutional right to a trial and all the other rights I've
4 just discussed. There will be no trial in this case. The
5 court will simply enter a judgment of guilty based upon your
6 plea. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you do plead guilty, I'll have to
9 ask you questions about what you did in order to satisfy
10 myself and Judge Sifton that you are guilty of the crimes
11 charged. You're going to have to answer my questions and
12 acknowledge your guilt. That means you'll be giving up your
13 right not to testify against yourself. You understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Also if you enter a guilty plea today
16 and you admit the criminal conduct alleged in the indictment,
17 and if Judge Sifton accepts that guilty plea, you won't be
18 able to appeal to a higher court on whether you committed the
19 crime or not. That will be over by your plea.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you willing to give up your right
23 to a trial and all the other rights I've just discussed?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Now I want to go over the

1 penalty sheet with you to make sure that you understand the
2 possible penalties that you face if you do plead guilty.

3 First of all, Counts 1 and 2 which are conspiracy
4 to commit wire fraud and wire fraud have maximum terms of
5 imprisonment of 20 years, minimum terms of imprisonment of
6 zero years, the maximum term of supervised release of three
7 years.

8 What supervised release is is a period of time
9 after you spend in prison where you have to live by certain
10 terms and conditions and if you violate them, you can be
11 arrested and put back into prison for up to two years without
12 any credit for time you've already spent in prison. You
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. The fine -- maximum fine is
16 twice the gross gain or gross loss of the fraud, restitution
17 in an amount to be determined by the court at sentencing,
18 \$100 special assessment, criminal forfeiture of \$900,000 and
19 possible deportation or removal from the United States. Are
20 you with me so far?

21 THE DEFENDANT: Yes, sir.

22 MR. SPECTOR: And Judge? I'm sorry. Just to be
23 clear, the government's position is that this would be an
24 aggravated felony and therefore deportation would be
25 mandatory.

1 THE COURT: Okay. Counts 3 and 4 which are the
2 identity theft charges, if I'm correct -- yes. They have
3 maximum terms of imprisonment of two years, minimum terms of
4 imprisonment of two years, maximum terms of supervised
5 release of one year, maximum fine of again twice the gross
6 gain or gross loss, restitution in an amount to be determined
7 by the court, \$100 special assessment and possible
8 deportation or removal from the United States. You
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. And as is listed here in the
12 penalty sheet, the court must impose a term of imprisonment
13 of two years each on Counts 3 and 4 and those terms must run
14 consecutively to any sentence that's imposed on Counts 1 and
15 2 and they also may run consecutively to one another.

16 So that means that whatever term of imprisonment
17 Judge Sifton deems appropriate on Counts 1 and 2 could be
18 followed by two years on Count 3 and then two years on Count
19 4. It will be up to Judge Sifton, though, to make that
20 determination.

21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Now there's discussion in the
24 penalty sheet of the United States Sentencing Guidelines and
25 I want to talk about them for a minute. They are guidelines

1 that are issued by the United States Sentencing Commission
2 pursuant to the Sentencing Reform Act of 1984 and judges look
3 to them to determine sentences in criminal cases.

4 Now the guidelines are only advisory, but they
5 remain an important consideration in sentencing and Judge
6 Sifton will take them into account as one factor in
7 determining what sentence to give you. Have you had a
8 discussion with Mr. Hueston concerning the sentencing
9 guidelines?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Now they're very
12 complicated and difficult for judges and lawyers to
13 determine, so I don't expect you to have a complete
14 understanding of them. To make a long story short and you
15 will correct me if I'm wrong, counselors, but the -- okay.
16 The guideline range for -- why don't you explain it to me?

17 MR. SPECTOR: I'm happy to do that, Judge.

18 THE COURT: Okay.

19 MR. SPECTOR: This is a very unusual situation.
20 We've set forth in the first section a guidelines calculation
21 based on the fraud charged in the indictment to which the
22 defendant's going to plead guilty.

23 THE COURT: The four counts?

24 MR. SPECTOR: The four counts.

25 THE COURT: Okay. And the guidelines calculation

1 which yields a total adjusted offense level of 24 carries a
2 range of imprisonment of 63 to 78 months assuming the
3 defendant falls within category 3.

4 In addition to that, as the Court mentioned, he
5 faces potentially at least a two-year consecutive term and
6 possibly a four-year consecutive term, so assuming there's a
7 four-year consecutive term --

8 THE COURT: On Counts 3 and 4?

9 MR. SPECTOR: -- on Counts 3 and 4, that would be
10 on top of the guidelines calculation for Counts 1 and 2.
11 That would yield an operative sentencing range of 111 to 126
12 months for all four counts together --

13 THE COURT: Okay.

14 MR. SPECTOR: -- assuming, again, he's category 3.

15 THE COURT: All right. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay.

18 MR. SPECTOR: In addition to that, however, the
19 government's position is that the defendant also participated
20 in a kidnaping which was in connection with some of the
21 proceeds of the fraud, and at sentencing the government
22 intends to offer evidence of that and take the position that
23 that is relevant conduct and therefore the kidnaping conduct
24 should be the operative guidelines calculation and so we've
25 set forth the kidnaping guidelines in the second section of

1 the penalty sheet.

2 That calculation yields a total adjusted offense
3 level of 38 which is a range of imprisonment of 292 to 365
4 months, assuming the defendant is in category 3. Because of
5 the operative statutory maximums, however, there's
6 essentially a cap of 24 years -- 20 years on the fraud and
7 four years on the identity theft.

8 So essentially the operative sentencing range for
9 all four counts of conviction, assuming the government
10 prevails on the kidnaping argument, would be 288 months.

11 THE COURT: Okay. You understand that?

12 THE DEFENDANT: Yes. I understand what he's
13 saying.

14 THE COURT: Not that you agree with it --

15 THE DEFENDANT: Yes. I don't.

16 THE COURT: -- but you understand it. Okay. And
17 there's nothing, I don't think, since you're not -- you
18 haven't entered into a plea agreement --

19 THE DEFENDANT: Yes.

20 THE COURT: -- with the government -- there's
21 nothing prohibiting Mr. Hueston in arguing that the
22 government's dead wrong on its interpretation of the
23 sentencing guidelines.

24 So you will have the opportunity at sentencing to
25 make an argument for whatever Mr. Hueston and you determine

1 is the appropriate guideline range.

2 But again, you've got to remember that that's just
3 one factor. The guidelines are not mandatory on Judge Sifton
4 and he has the authority under the law to sentence you to a
5 term of imprisonment that's more severe or less severe than
6 what the guidelines might call for as long as he stays within
7 the statutory minimum and maximums. It's up to him.

8 Now before sentencing, he's going to get a pre-
9 sentence report from the Probation Department which will have
10 certain facts in it about you and about the offense that
11 you've pled guilty to and it will also have a guideline
12 calculation in it and a recommendation to Judge Sifton on
13 what your sentence should be.

14 Mr. Hueston will have the opportunity in
15 consultation with you to challenge any facts contained in
16 that pre-sentence report and make any arguments as to why
17 their sentencing guideline calculation is wrong. So you'll
18 have full and fair opportunity to make your pitch to Judge
19 Sifton.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. And now the sentencing date has
23 been set for May 11th of 2009 at noon before Judge Sifton.
24 And correct me if I'm wrong, Mr. Spector, but the Hernandezes
25 will have the opportunity to come to the sentencing as

1 well --

2 MR. SPECTOR: Correct.

3 THE COURT: -- as victims and they can -- I don't
4 know if Judge Sifton will entertain it, but it's up to him as
5 to whether they have the opportunity to make a statement.

6 MR. SPECTOR: Actually, Judge, I believe under the
7 statute, the court is required to.

8 THE COURT: Required to? Okay. So you'll have the
9 opportunity to talk to Judge Sifton at sentencing. I want to
10 make sure I don't miss anything. Okay. The final thing I
11 want you to understand about sentencing is that there's no
12 Parole Board in the federal system.

13 There's no Parole Commission, so what that means is
14 whatever Judge Sifton decides and hands down will be very
15 close to the actual amount of time you spend in prison
16 because you won't be able to write to a Parole Board or
17 Parole Commission to let you out early because no such thing
18 exists in the federal system.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Do you have any questions at all
22 that you want to ask me about the charges, your rights or
23 anything else that is related to this matter that may not be
24 clear to you?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you ready to plead?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Hueston, do you know of any reason
4 why Mr. Samuel should not plead guilty to these charges?

5 MR. HUESTON: No, I don't.

6 THE COURT: Are you aware of any legal defense to
7 the charges?

8 MR. HUESTON: No, I am not.

9 THE COURT: Mr. Samuel, how do you plead to Count 1
10 in the indictment? Guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: How do you plead to Count 2 in the
13 indictment? Guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: How do you plead to Count 3 in the
16 indictment? Guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: How do you plead to Count 4 in the
19 indictment? Guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Are you making these guilty pleas
22 voluntarily and of your own free will?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has anyone threatened, forced or
25 pressured you to plead guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anyone promised you what sentence
3 you will receive from Judge Sifton if you plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Okay. Why don't you tell me in your
6 own words what it is you did with respect to each of the four
7 counts in the indictment? You're going to have to basically
8 tell me why you're guilty.

9 THE DEFENDANT: In July of 2005, I conspired to
10 make wire fraud.

11 THE COURT: You conspired with others?

12 THE DEFENDANT: Yes. Conspired --

13 THE COURT: Okay.

14 THE DEFENDANT: -- with others.

15 THE COURT: In -- in --

16 THE DEFENDANT: In Brooklyn.

17 THE COURT: -- in Brooklyn?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what -- basically what did that
20 conspiracy entail?

21 THE DEFENDANT: Devise a scheme.

22 THE COURT: To --

23 THE DEFENDANT: To --

24 THE COURT: -- do what?

25 THE DEFENDANT: -- to commit fraud. Like --

1 THE COURT: From --

2 THE DEFENDANT: -- real estate.

3 THE COURT: -- okay. All right. So you conspired.
4 You'll have to give me a little more than that on Count 1.
5 Do it without using any legal terms or anything like that.
6 Just -- you know -- as if you and I were sitting at a bar,
7 having a drink. Tell me what happened and I will listen to
8 you and make a determination as to whether you have committed
9 these crimes and then I'll make a recommendation to Judge
10 Sifton. So you tell me what happened.

11 THE DEFENDANT: I conspired with others to devise a
12 plan to do a real estate or fraud case and provide the money
13 and --

14 THE COURT: You had the money -- so you posed as
15 someone who would want to get --

16 THE DEFENDANT: Yes.

17 THE COURT: -- to do a real estate deal?

18 THE DEFENDANT: Yes.

19 THE COURT: And in connection with that, you
20 utilized the -- you had monies wired?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. Mr. Spector, tell me what you
23 understand happened here.

24 MR. SPECTOR: I think just so the record is clear,
25 the defendant posed as the relative or son of the property

1 owners, the Hernandezes and then the Thompsons, arranged to
2 have a fraudulent closing set up in which another co-
3 conspirator who was recruited by the defendant would come to
4 the closing posing as the property owner and fraudulently
5 obtain funds from the closing and then acting at the
6 defendant's direction, either wired those funds or in other
7 cases took checks from those funds which then went to the
8 defendant.

9 THE COURT: Okay. And that was all done here in
10 Brooklyn?

11 MR. SPECTOR: The properties were in Brooklyn and I
12 believe the closings occurred in Long Island.

13 THE COURT: Okay. Either way, in the Eastern
14 District --

15 MR. SPECTOR: Right.

16 THE COURT: -- of New York. Is that about right,
17 Mr. Samuel?

18 MR. HUESTON: The only issue we take -- the issue
19 about direction, Your Honor, in terms of any issue -- in
20 terms of enhancement, that's something that we would take
21 issue with. I just wanted to make that one statement.

22 THE COURT: He had this agreement with these other
23 people to pose as the son of the property owner -- two
24 different property owners -- and have someone else pose as
25 the property owners to do these real estate deals and get

1 money from that. Is that right?

2 THE DEFENDANT: Yes.

3 THE COURT: Don't say yes just because I'm looking
4 at you. If that's right, that's right. If it's wrong, it's
5 wrong.

6 THE DEFENDANT: Yes, sir, Your Honor, but the part
7 where you said I got other people, I didn't --

8 THE COURT: Other people --

9 THE DEFENDANT: -- I didn't --

10 THE COURT: -- other people got you?

11 THE DEFENDANT: I didn't set it up.

12 THE COURT: Okay. All right. But you -- you --
13 you --

14 THE DEFENDANT: I was part of that.

15 THE COURT: You were part of the scheme?

16 THE DEFENDANT: Yes.

17 THE COURT: And you had agreed to be part of the
18 scheme?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. It's not that you were just
21 brought along and you didn't know what was going on? Okay.
22 Well, in the course of doing this, you did pose as someone
23 else?

24 THE DEFENDANT: Yes.

25 THE COURT: As Carlos Hernandez in one instance --

1 well, as the son of Carlos Hernandez?

2 THE DEFENDANT: Yes.

3 THE COURT: And as the son of -- I don't want to
4 mispronounce this -- Santeech (ph.) --

5 MR. SPECTOR: Santeech (ph.) Thompson.

6 THE COURT: Santeech (ph.) Thompson?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. And I think the identity theft,
9 at some point in time, you had --

10 MR. SPECTOR: Judge, if I may? I think for the
11 purposes of the plea, the defendant has to allocute that he
12 at some point possessed --

13 THE COURT: Possessed the driver's license?

14 MR. SPECTOR: -- and used these false identification
15 documents. And our position is that he obtained them and
16 then supplied them to his co-conspirator.

17 THE DEFENDANT: We obtained and utilized these
18 identities in the scheme, sir.

19 THE COURT: Okay. So you, you --

20 THE DEFENDANT: And 4.

21 THE COURT: -- okay. Three and four. So you
22 had -- through this plan you had with these other folks,
23 somehow you got the driver's license for Mr. Hernandez and
24 for Mr. Thompson and supplied them to the other folks so they
25 could pose as them?

1 THE DEFENDANT: We used them, yes, Your Honor.

2 THE COURT: You used them?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Well --

5 MR. SPECTOR: I think for the purpose of the
6 allocution, it's sufficient if he agrees that he was part of
7 the scheme to use the false identification documents. He
8 possessed them at some point and then allowed them to be used
9 for the purpose of the scheme.

10 THE COURT: Is that right?

11 MR. HUESTON: I agree with possession.

12 THE COURT: Okay. All right.

13 MR. SPECTOR: And Judge, I think just so the record
14 is clear, the defendant should allocute that he understood
15 that these were going to be used for the scheme and
16 understood that these were, in fact, false identification
17 documents.

18 THE DEFENDANT: That's true, Your Honor.

19 THE COURT: Okay. Were they false documents or
20 were they real documents --

21 MR. SPECTOR: They were false identity documents.

22 THE COURT: Okay. All right. Is that right? You
23 knew they were false?

24 THE DEFENDANT: Yes.

25 THE COURT: And you knew that they would be used in

1 furtherance of this deal that you had to do these real estate
2 closings?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. All right. Based on the
5 information given to me, I find that Mr. Samuel is acting --

6 MR. SPECTOR: Judge, I'm sorry.

7 THE COURT: What?

8 MR. SPECTOR: I'm sorry. Just one other point just
9 so that everything is clear. With respect to Count 2, we've
10 set forth the specific wire. I think the defendant should
11 just allocute that he was part of the scheme to have those
12 funds wired, that that was the proceeds of the fraud.

13 THE DEFENDANT: I agree that was the proceeds of --
14 yes -- the fraud.

15 THE COURT: Okay. So you had -- at some point in
16 time, a wire transfer was made for \$353,000 in furtherance of
17 this -- the conspiracy that you had to commit wire fraud?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right.

20 MR. SPECTOR: Well, and that the defendant should
21 acknowledge that he was part of the scheme to arrange that
22 wire.

23 THE COURT: Well -- well, isn't that what he's
24 already done with respect to --

25 MR. SPECTOR: I believe --

1 THE COURT: -- Count 1?

2 MR. SPECTOR: -- I believe he has acknowledged
3 that. I just want to make sure the record's clear so that
4 there's --

5 THE COURT: Yes. I think he has. I think he's
6 acknowledged that he was part of a scheme to do these real
7 estate closings under false pretenses using false
8 identification. It all happened in the Eastern District of
9 New York on or about July 2005 and December 2005, although
10 you didn't say that --

11 THE DEFENDANT: Yes.

12 THE COURT: -- but that's the second one, right?
13 And that in furtherance of this scheme that you had with
14 these other people, \$353,000 was wired to an account that I
15 think you and your co-conspirators had control over?
16 Although I don't know that that's --

17 MR. SPECTOR: That's not relevant.

18 THE COURT: -- that's not relevant, not necessary
19 to --

20 MR. SPECTOR: But he did arrange for the wire to be
21 sent.

22 THE COURT: Yes. All right. I certainly find that
23 Mr. Samuel is acting knowingly and voluntarily, that he fully
24 understands his rights, the charges against him and the
25 consequences of his plea and with the assistance of Mr.

1 Spector and Mr. Hueston and the court in discussing the
2 underlying actions, I do find that there's a factual basis
3 for the plea.

4 I don't think there's any dispute that Mr. Samuel
5 has admitted that he was part of a conspiracy to commit wire
6 fraud through these fraudulent real estate transactions on
7 July 2005 and December 2005 and that in the furtherance of
8 that conspiracy, he caused at least in part to be directed a
9 wire transfer of \$353,000 and he and his co-conspirators used
10 false identification documents to accomplish that.

11 It's my recommendation to Judge Sifton that he
12 accept Mr. Samuel's guilty pleas to Counts 1, 2, 3 and 4.
13 Again, sentencing has been set for May 11th, 2009 at 12
14 before Judge Sifton.

15 MR. HUESTON: Your Honor, there's just one -- and
16 just out of excess caution. The government used to determine
17 with respect to Count 2 of the wire fraud that he arranged.
18 It's my reading of the law that this submission to -- for Mr.
19 Samuel to admit that he did transmit or caused to be
20 transmitted the proceeds by wire and not in terms of -- I
21 understand that the government made that statement about
22 arranging --

23 THE COURT: Well --

24 MR. HUESTON: -- that again --

25 THE COURT: -- I think he was using the term

1 arranging in the way the statute's written -- caused or --

2 MR. HUESTON: That's my understanding. That it
3 would just be caused -- you know -- to transmit through
4 wires, but not give any position of leadership or in terms of
5 any sentencing enhancement. I just want to make sure that's
6 clear from our standpoint.

7 THE COURT: Okay. The record's been made.
8 Anything else?

9 MR. HUESTON: Nothing from the defendant, Your
10 Honor.

11 MR. SPECTOR: No, Your Honor.

12 THE COURT: Thank you.

13 MR. HUESTON: Thank you.

14 MR. SPECTOR: Thank you, Judge.

15 THE COURT: Okay.

16 (Proceedings concluded at 1:00 p.m.)

17 I, CHRISTINE FIORE, Certified Electronic Court
18 Reporter and Transcriber and court-approved transcriber,
19 certify that the foregoing is a correct transcript from the
20 official electronic sound recording of the proceedings in the
21 above-entitled matter.

22 
23

24 _____ March 10, 2009

25 Christine Fiore, CERT